

RECEIVED

DEC 4 1995

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 69.2(m))
and (ee) of the Commission's) RM No. 8723
Rules to Include Independent)
Public Payphones Within the)
"Public Telephone" Exemption)
From End User Common Line)
Access Charges)

DOCKET FILE COPY ORIGINAL

AT&T OPPOSITION

Pursuant to the Commission's Public Notice dated November 2, 1995, AT&T Corp. ("AT&T") hereby opposes the American Public Communications Council's ("APCC's") petition to exclude independent private payphones ("IPPs") from the requirement to pay End User Common Line ("EUCL") charges.

Section 69.2(ee) of the Commission's Rules, 47 C.F.R. § 69.2(ee), defines a "public telephone" as "a telephone provided by a telephone company through which an end user may originate" interstate or international telephone calls (emphasis supplied). Section 69.2(hh), in turn, defines a "telephone company" as a local exchange carrier. APCC correctly acknowledges that IPPs are not within this definition, because they "are not owned by a local exchange carrier."¹ Nevertheless, APCC seeks here to have this long-standing definition changed to suit its own

¹ APCC, n.1.

No. of Copies rec'd
List ABCDE

0+9
CUB

purposes and to cast additional costs onto interexchange carriers. APCC's petition should be denied.

APCC's argument rests solely on the alleged "discrimination" between LEC-owned public telephones and IPPs that results from the fact that IPP owners pay EUCL charges while LECs do not. However, the Commission's rules treat LEC public phones as network equipment, while IPP phones are Customer Premises Equipment. Moreover, IPP owners, unlike LECs, "subscribe to local exchange telephone service."² Accordingly, there is no reason why identical access charges should be applied to these different categories of equipment.

Further, APCC's argument completely ignores the fact that it has used the differences between LEC payphones and IPPs to IPP owners' advantage in obtaining other forms of economic support for private payphones. Thus, APCC's argument fails to recognize that LECs, unlike IPP providers, do not -- and cannot -- receive commissions from IXCs for calls placed from their payphones.³ IPP providers, on the other hand, are free to select the presubscribed carrier for their phones and receive substantial commissions for making such selections. Thus, unlike LECs, and contrary to APCC's

² 47 C.F.R. § 69.104(a).

³ The LECs' nondiscrimination obligations under Section 202 of the Communications Act preclude them from receiving compensation for selecting a presubscribed IXC for their payphones.

assertion (p. 7), the access lines for IPPs are under the direct control of, and therefore "dedicated to," IPP providers. Accordingly, it is appropriate to treat IPP providers as "end users" under Section 69.2(m).⁴

Further, unlike IPPs, LECs are not eligible to receive dial around compensation for access code calls placed from their payphones. The Commission's Rules require Operator Service Providers ("OSPs") to pay dial around compensation to IPP owners, but not LECs.⁵ APCC makes no effort to account for this substantial economic support, and it offers no evidence that IPPs are disadvantaged overall compared to LEC payphones.

Finally, APCC's argument (p. 9) that LECs would not be injured by its request to avoid EUCL charges ignores the substantial impact of this proposal on OSPs. APCC asserts that LECs' costs for providing the local loops to IPPs could be reimbursed through Carrier Common Line ("CCL") charges. This ignores, however, that the additional CCL charges would be passed to OSPs -- who already subsidize IPPs through commission payments and/or dial around compensation. APCC offers no reasons at all why the Commission should mandate increased IPP support from OSPs.

⁴ 47 C.F.R. § 69.2(m).

⁵ 47 C.F.R. § 64.1301.

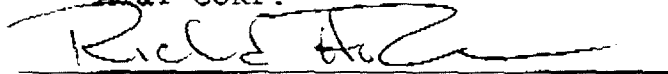
4

WHEREFORE, for the reasons stated above, APCC's
petition should be denied.

Respectfully submitted,

AT&T CORP.

By



Mark C. Rosenblum
Peter H. Jacoby
Richard H. Rubin

Its Attorneys

Room 3252I3
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4481

December 4, 1995